ers v. *State*, 74 Miss. 771, 21 South. 657; *Allen* v. *Commonwealth*, 161 Ky. 325, 182 S. W. 176.

Such inconsistent holdings, and the strained constructions put upon simple expressions of opinion, in order that they might be received in evidence, are convincing of the fact that there is something wrong with the opinion rule as applied to dying declarations. On reason, the opinion rule should not apply to dying declarations. As stated above, the theory of the rule is that whenever the witness can state specifically the detailed facts observed by him, the inferences to be drawn from them can usually be drawn by the jury, hence the witness' inferences become superfluous. But as applied to dying declarations it is impossible to obtain any more detailed data than that which his statements may contain, because the deceased is dead; and hence his inferences are not superfluous, but become indispensable, and the opinion rule should not apply. WIGMORE, EVIDENCE, § 1447. This logical and sound argument has been adopted by at least two courts in very recent decisions. In *Thomas* v. *State* (Okl.), 164 Pac. 995, a dying declaration that "those negroes shot me and robbed me" was received in evidence, the court refusing to draw a distinction between fact and opinion. In *Pippin* v. *Commonwealth*, 117 Va. 919, 86 S. E. 152, a similar declaration that "he (the accused) done it a-purpose" was held admissible, the court adopting Wigmore's view *in toto*.

In the instant case the court held that the declaration that the accused "shot me and didn't have any cause" was a statement of a fact and admissible; while another declaration, "O Lord, what a pity for Frank McNeal (the accused) to shoot a poor boy like I am. I never did anything to Frank" was held to be a mere exclamation of self-pity, and inadmissible. Clearly both of the declarations were not statements of fact, but the court, fettered by its previous decisions, felt bound to hold the first declaration a statement of fact and admissible; but held the other declaration inadmissible on the ground it was a mere exclamation of self-pity. In reality no distinction can be drawn between the two declarations. If one is fact, they are both fact; if one is opinion, both are opinion. This case is a good illustration of the inconsistent doctrines that have emanated from the application of the opinion rule to dying declarations, and which might be eliminated from our law by the abolition of the opinion rule as to dying declarations.

INSURANCE—FIRE POLICY—EXPLOSIONS.—The insured took out a fire insurance policy on his house. The policy contained a clause exempting the insurer from liability for loss caused by an explosion of any kind, unless fire ensued, and in that event for the damage caused by the fire only. A fire occurred, followed by an explosion. The damage as shown, occasioned by both fire and explosion amounted to $661.43, and the loss occasioned by fire alone, when considered as if no explosion had occurred, amounted to $58.00. *Held*, the plaintiff is entitled to recover for the full amount of damages due to fire and explosion. *Western Ins. Co.* v. *Skass* (Colo.), 171 Pac. 358.

The weight of authority supports the rule that where an explosion

occurs on the insured's property during the progress of a fire, such explosion is treated as an incident of the preceding fire and the whole loss is the risk insured. And this is true even where the policy contains a provision limiting the insurer's liability to the loss occasioned by the fire alone. *Wheeler* v. *Phoenix Ins. Co.*, 302 N. Y. 283, 96 N. E. 452, 38 L. R. A. (N. S.) 474; *Hall* v. *National Ins. Co.*, 115 Tenn. 513, 92 S. W. 402, 112 Am. St. Rep. 870, 5 Ann. Cas. 777; *Mitchell* v. *Potomac Ins. Co.*, 183 U. S. 42.

The English rule is that the duty rests upon the insured to show the extent of the loss by fire as distinguished from that produced by the explosion, and his failure to do so results in his own loss and not that of the insurer. *Stanley* v. *West Ins. Co.*, L. R. 3 Exch. 71. But this decision is not followed in this country, and is not in accord with the great weight of modern authority. In order for the explosion to be treated as an incident of the fire, the fire must be of such a nature as would, if it had pursued its natural course, have resulted in the total or partial destruction of the building, and must not be a harmless fire, such as a lighted cigar, match or burning gas jet. *United Fire Ins. Co.* v. *Foote*, 22 Ohio St. 340, 10 Am. Rep. 735; *Briggs* v. *North American, etc., Ins. Co.*, 53 N. Y. 446.

Where a policy contains an explosion clause of the same type as the one in the instant case and where the explosion precedes the fire, the insurer is liable only for the loss occasioned by the fire. *American Ins. Co.* v. *Hyman*, 42 Colo. 156, 94 Pac. 27, 16 L. R .A. (N. S.) 77; *Stevens* v. *Fire Association of Philadelphia*, 139 Mo. App. 369, 123 S. W. 63. Where however, the damage is due to an explosion occuring in an adjoining building which resulted from fire, the insurer is not liable for such damages, where the policy contains a clause excepting loss caused by explosions. *Hustace* v. *Phoenix Ins. Co.*, 175 N. Y. 292, 67 N. E. 592, 62 L. R. A. 651. And where the policy contains a clause exempting the insurer from loss due to any explosions, it has been held, that the insurer is not liable for any loss by fire which occurs by reason of an explosion. *Haward* v. *Liverpool, etc., Ins. Co.*, 42 N. Y. 456; *Insurance Co.* v. *Tweed*, 7 Wall. (U. S.) 44. But see *Commercial Ins. Co.* v. *Robinson*, 64 Ill. 265, where, under a policy containing a similar clause, a different result was reached. Where, however, the fire is already in progress, the insurer is liable, although the policy contains an exemption from loss by explosion, or loss from fire by explosion. *Waters* v. *Louisville Mer. Ins. Co.*, 11 Pet. (U. S.) 313; *Millandon* v. *New Orleans Ins. Co.*, 4 La. Ann. 15.

It is sometimes stated that to hold the insurer liable for losses caused by an explosion resulting from fire, is to nullify the clause in the policy exempting the insurer from loss due to explosions; because there would be no need for the insurer to except losses caused by explosions, unless explosions caused by fire were contemplated in the exception, for the insurer is in no event liable for an explosion not caused by fire. *Hustace* v. *Phoenix Ins. Co., supra.* The modern view does not favor this construction, and the decision in the instant case seems sound on principle and is in accord with the weight of authority.